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EXAMINER

STRANGE, AARON N

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/605,848
Filing Date: June 29, 2000
Appellant(s): DODRILL ET AL.

Edward J. Stemberger
Reg. No. 36,017
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/14/2007 appealing from the Office action mailed 2/15/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claims 8, 10, 15, 16, 25, 26, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurille (US 6,484,196) in view of Jindal et al. (US 6,327,622) further in view of Official Notice.

Claims 11 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurille (US 6,484,196) in view of Jindal et al. (US 6,327,622) further in view of Cave (US 5,958,014).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Cave	US 5,958,014	Sep. 28, 1999 (filed Sep. 24, 1996)
Jindal	US 6,327,622	Dec. 4, 2001 (filed Sep. 3, 1998)
Maurille	US 6,484,196	Nov. 19, 2002 (filed Mar. 20, 1998)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 5-7, 9, 12-14, 17, 18, 20, 22-24, 27, 28, 30, 32-34, 36, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurille (US 6,484,196) in view of Jindal et al. (US 6,327,622).

With regard to claim 1, Maurille discloses a method in an application server for initiating inter-process communication between non-persistent application sessions, the method comprising:

initiating a first application instance (server application) (Col 3, Lines 2-5) for establishment of an application session (talk session) between the application server and a first party (Col 18, Lines 58-67);

determining whether a second party (intended talk session participant) (Col 19, Lines 1-2) is available (online) to receive a message (message 804) (Col 18, Line 64) having been established in the application session between the application server and the first party (Col 19, Lines 1-2);

based on the determined availability of the second party (if user is online), generating a HTML page (active server page) (Col 6, Lines 4-12), originating in the first application instance (server generates an incoming message box), having instructions for a browser, in use by the second party, to notify the second party of a new application session for the second party so as to present the message to the second party (incoming message box notifies second party of the session and gives them the option to join)(Col 19, Lines 2-15);

wherein the generating step includes inserting a uniform resource locator (URL)

within the HTML page causing the browser to request interruption of a present application session of the second party (message box requests that the user stop the current session to enter talk session) (Col 19, Lines 2-9) to create the new application session (enter talk session and respond) for the second party (Col 19, Lines 12-15).

Maurille fails to specifically disclose that the application session of the second party is established by another application instance distinct from the first application instance.

Jindal teaches using multiple instances of an application spread across a plurality of servers in order to balance the load of client requests (at least Col 2, Lines 41-57). This reduces the load on any single instance of the application, resulting increased performance of the system (at least Col 2, Lines 57-67). This would have been an advantageous addition to the system disclosed by Maurille since it would have reduced the load on the server application and allowed larger numbers of clients to be handled.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use multiple instances of the server application to serve sessions from different clients since it would have reduced the load on a single instance of the server application, increasing performance of the system and allowing a greater number of clients to use the system.

With regard to claim 3, Maurille further discloses generating a new session identifier that specifies the new application session for the second party, wherein the

URL includes the new session identifier for interrupting the present session of the second party with the new application session (TalkSessID) (Col 19, Lines 5-65).

With regard to claim 5, Maurille further discloses that the HTML page includes a prompt enabling the second party to respond to the message (Col 19, Lines 2-15).

With regard to claim 6, Maurille further discloses that
the determining step includes accessing a registry (database) locally accessible by the application server (database is accessed to see if user currently allows alerts),
and

the method further including updating the registry to indicate that the first part is available for messaging operations (user may change availability preferences to hold/allow alerts) (Col 8, Lines 5-20).

With regard to claim 7, Maurille further discloses storing the message in a data store of the second party (message is stored at and displayed to second party) (Col 19, Lines 12-15).

With regard to claim 9, Maurille further discloses accessing attribute information of the second party to determine whether the second party authorizes receipt of the message from the first party (determine whether second party agreed to join session)(Col 19, Lines 9-16).

With regard to claim 20, Maurille discloses an application server configured for executing a messaging application, the application server including:

an application runtime environment configured for dynamically originating and generating, in a first application instance (server application) (Col 3, Lines 2-5) between the application server and a first party (Col 18, Lines 58-67), a hypertext markup language (HTML) document (active serverpage) (Col 6, Lines 4-13) having instructions for a browser to notify a second party of a new application session for the second party (incoming message box notifies second party of the session and gives them the option to join) (Col 19, Lines 2-15), based on a determination that the second party using the browser is available (online) to receive the HTML document, the application runtime environment being configured to access a common resource (database 108) containing information regarding both the first and second parties (Col 6, Lines 44-57; Col 19, Lines 47-65),

wherein the HTML document has instructions to interrupt a present application session (message box requests that the user stop current session to enter talk session) (Col 19, Lines 2-9) of the second party to create the new application session for the second party (enter talk session and respond) (Col 19, Lines 12-15).

Maurille fails to specifically disclose that the application session of the second party is established by another application instance distinct from the first application instance.

Jindal teaches using multiple instances of an application spread across a plurality of servers in order to balance the load of client requests (at least Col 2, Lines 41-57). This reduces the load on any single instance of the application, resulting increased performance of the system (at least Col 2, Lines 57-67). This would have been an advantageous addition to the system disclosed by Maurille since it would have reduced the load on the server application and allowed larger numbers of clients to be handled.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use multiple instances of the server application to serve sessions from different clients since it would have reduced the load on a single instance of the server application, increasing performance of the system and allowing a greater number of clients to use the system.

With regard to claim 22, Maurille further discloses that the HTML document includes a prompt enabling the second party to respond to the message (Col 19, Lines 2-15).

With regard to claim 23, Maurille further discloses that the common resource (database) includes a registry (users table) and the application runtime environment is configured to access the registry and to update the registry to indicate that the first party is available for messaging operations (user may change availability preferences to hold/allow alerts) (Col 8, Lines 5-20).

With regard to claim 24, while Maurille fails to specifically recite that the application runtime environment is configured to access the common resource (database) via an application programming interface (API), such a limitation is inherent in the system taught by Maurille. An API must be used to access and modify the entries in the database (Col 6, Lines 44-57; Col 7, Line 66 to Col 9, Line 55)

With regard to claim 27, Maurille further discloses that the common resource includes a registry (users table) and the application runtime environment is configured to access the registry (check to see if user will accept alerts) (Col 8, Lines 3-20) and to determine whether or not the second party is available to receive the message (Col 19, Lines 1-2).

Claims 12-14, 17, 18, 28, 30, 32, 33, 34, 36, 39 and 41 are rejected under the same rationale as claims 1, 3, 5, 6, 7, 9, 20, 22 and 24, since they recite substantially identical subject matter. Any differences between the claims do not result in patentably distinct claims and all of the limitations are taught by the above cited art.

Claims 8, 10, 15, 16, 25, 26, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurille (US 6,484,196) in view of Jindal et al. (US 6,327,622) in further view of Official Notice.

With regard to claims 8, 10, 25, 26, 35 and 37, while the system disclosed by Maurille shows substantial features of the claimed invention (discussed above), it fails to specifically disclose using IMAP or LDAP for storing messages or accessing the database.

The Examiner takes Official Notice that both IMAP and LDAP are old and well-known protocols in the art. It would have been advantageous to use these protocols to store/access data since these standard protocols have a large amount of pre-existing documentation and support, making the system easier to implement and maintain.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use IMAP and LDAP to store/access data since they are well-known standard protocols.

Claims 11 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maurille (US 6,484,196) in view of Jindal et al. (US 6,327,622) in further view of Cave (US 5,958,014).

With regard to claims 11 and 38, while the system disclosed by Maurille shows substantial features of the claimed invention (discussed above), it fails to specifically disclose that the message is a voice message and the HTML page includes instructions for playing the voice message.

Cave discloses a similar system for communicating between a plurality of people

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in a collaborative environment. Cave teaches the use of voice messaging as an alternative to text messaging for communications (Col 1, Line 65 to Col 2, Line 3; Col 4, Lines 3-13). This would have been an advantageous addition to the system disclosed by Maurille since it would have allowed users to communicate via voice messages rather than text messages if desired. Voice messages are preferable to text messages in many situations because they generally allow faster communication of the same amount of information and are better for conveying emotions than text messages are.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use voice messages as an alternative to text messages in the system disclosed by Maurille.

(10) Response to Argument

Regarding claims 1, 3, 5-7, 9, 12-14, 17, 18, 20, 22-24, 27, 28, 30, 32-34, 36, 39 and 41, of which claims 1, 12, 20, 28 and 39 are independent, Appellants only present arguments to these claims collectively, and present no separate arguments directed to the remaining dependent claims encompassed by this rejection. The Examiner will address independent claim 1 as representative of all claims on appeal.

A summary of the various points raised by Appellants are presented below, and each point is addressed individually by the Examiner:

Regarding independent claim 1, Appellants present three principal arguments:

1) The Examiner has failed to demonstrate that “there was an apparent reason to combine the known elements in the fashion claimed by the [claims] at issue [where] this analysis should be made explicit” (Br. 5)

2) The combination of Maurille and Jindal does not teach or suggest an “HTML page originating in the first application instance, requesting interruption of a present application session of the second party, established by another application instance distinct from the first application instance” (Br. 6).

3) The combination of Maurille and Jindal would result in “first and second instances [that would] be distinct and would have no interrupt relation with respect to each other” (Br. 6).

Regarding argument 1) that the Examiner has failed to demonstrate that “there was an apparent reason to combine the known elements in the fashion claimed by the [claims] at issue [where] this analysis should be made explicit” (Br. 5), the Examiner respectfully disagrees, and directs attention to the rejection of claim 1 which *explicitly* sets forth an apparent reason why one of ordinary skill in the art would have combined the teachings of Maurille and Jindal. Specifically, Jindal teaches the use of multiple servers, each running at least one instance of an application, to spread client requests across a plurality of servers, which Jindal explicitly discloses will improve the performance of the system in various ways (i.e., least loaded server, closest server, server with highest throughput is favored, resulting in faster service for the client)(col. 2, ll. 57-67).

Regarding argument 2) that the combination of Maurille and Jindal does not teach or suggest an "HTML page originating in the first application instance, requesting interruption of a present application session of the second party, established by another application instance distinct from the first application instance" (Br. 6), the Examiner respectfully disagrees.

Maurille clearly discloses an HTML page (active server page)(col. 6, ll. 4-12) originating in a first application instance (server generates an incoming message box)(col. 19, ll. 3-4), requesting interruption of a present application session of a second party (incoming message box requests that the user stop the current session to enter a talk session)(col. 19, ll. 4-7).

The Examiner agrees that Maurille, taken alone, does not specifically disclose that the "application session of the second party" is established by another application instance distinct from the first application instance, since Maurille discloses only a single server application 114 (application instance). However, Jindal teaches load balancing in a network environment. Jindal teaches using multiple instances of an application, distributed across a plurality of servers (col. 2, ll. 41-57), where individual clients may be routed to, and their requests satisfied by, any of the multiple servers (col. 4, l. 65 to col. 5, l. 3). Jindal discloses that using multiple servers to service the clients will result in increased performance of the system (i.e., server with fastest response time is selected)(col. 2, ll. 57-59) since a single server may only be capable of efficiently satisfying the needs of a limited number of clients (col. 1, ll. 18-23). Therefore, one of

ordinary skill in the art would have seen a benefit to upgrading Maurille's system with multiple application instances, as taught by Jindal, in order to increase the number of clients that the system to service. Such an upgrade would have necessarily resulted in a plurality of application instances, each of which service one or more clients by establishing application sessions for the clients.

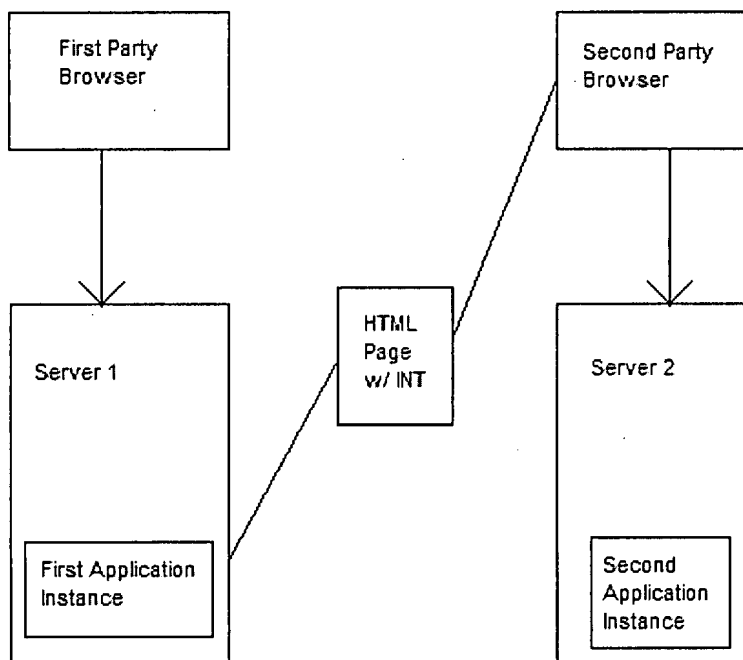
Regarding argument 3) that the combination of Maurille and Jindal would result in "first and second instances [that would] be distinct and would have no interrupt relation with respect to each other" (Br. 6), the Examiner respectfully disagrees. Appellants appear to be asserting that the combination of Maurille and Jindal would merely result in a plurality of distinct instances of Maurille, as evidenced by the sketch provided by Appellant (Br. 7). However, Appellants' proposed combination fails to "take account of the inferences and creative steps that a person of ordinary skill in the art would employ" *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350, Slip. Op. at 14, 82 USPQ2d 1385, 1396 (U.S. Apr. 30, 2007).

In this case, the primary purpose of Maurille is to enable communication between multiple parties (Maurille; col. 3, ll. 54-58). The advantage Jindal's teaching provides is the ability to increase the number of participants that the system may adequately service (Jindal; col. 1, ll. 18-23). Merely replicating Maurille will not accomplish this goal, since it would result in a plurality of distinct "messaging systems" rather than a single "messaging system" with increased capacity. One of ordinary skill in the art, when incorporating the teachings of Jindal to increase the capacity of Maurille's system would

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have recognized that any two users of the system must be able to communicate, rather than only users who happen to be serviced by the same application instance.

The Examiner maintains that the sketch presented below is an accurate depiction of the system that system that one of ordinary skill in the art would have arrived at, when combining the teachings of Maurille and Jindal.



In the above sketch, the first application instance (Maurille's server application) establishes an application session between a first party (first client) and the application server (server 1). The page is generated in the first application instance, and sent to the second party browser. The second part browser has already established a session with a second application instance (another instance of Maurille's server application) running on a second server (additional instance and server are used for load balancing, as

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taught by Jindal). The page contains instructions that cause the browser to request interruption of the present application session of the second party.

With regard to Appellants' assertion that "the Examiner is using improper hindsight in creating this sketch" (Br. 8), the Examiner respectfully disagrees. This sketch accurately shows what one of ordinary skill in the art, when using Jindal's load balancing teaching in an attempt to increase the client servicing capacity of Maurille, would have arrived at. The purpose of using multiple servers for load balancing is so that clients can be serviced by different servers. In order to preserve the functionality of Maurille when using multiple servers, a client being serviced on one server would have been able to interrupt a client being serviced by an additional server. Appellants have provided no evidence or even a reason why one of ordinary skill in the art would not have arrived at the combination of Maurille and Jindal shown by the above sketch.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

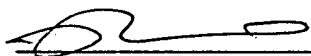
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